

Filed for intro on 01/20/2000

SENATE BILL 2899

By Person

AN ACT to amend Tennessee Code Annotated, Title 4; Title 10  
and Title 55, relative to driver licenses.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 55, Chapter 50, Part 5, is amended by  
adding the following language as a new, appropriately designated section:

Section 55-50-5\_\_.

(a)(1) Notwithstanding any provision of law to the contrary, the commissioner of the department of safety, having good cause to believe that an operator is incompetent or unqualified to retain a driver license, after giving ten (10) days' notice to such person in writing by certified mail directed to the licensee's present known address, may require the licensee to submit to an examination as prescribed by the commissioner. Upon conclusion of the examination, the commissioner may allow the licensee to retain a driver license, may suspend, deny or revoke the license of the licensee, or may issue to the licensee a license subject to reasonable restrictions. If an examination indicates a condition that potentially impairs safe driving, the commissioner, in addition to action with respect to the license, may require the licensee to submit to further periodic examinations.

(2) The refusal or neglect of the licensee to submit to an examination within thirty (30) days after the date of such notice shall be grounds for suspension, denial or revocation of the licensee's license by the commissioner.

(3) Notice of any suspension, denial, revocation or other restriction shall be provided to the licensee by certified mail as soon as practicable.

(4) As used in this subsection, the term "denial" means the act of not licensing a person who is currently suspended, revoked or otherwise not licensed to operate a motor vehicle.

(b) The examination provided for in subsection (a) may include, but is not limited to, a written test and tests of driving skills, vision, highway sign recognition and, if appropriate, a physical or mental examination.

(c)(1) The commissioner shall have good cause to believe that a licensee is incompetent or unqualified to retain a driver license on the basis of, but not limited to, a written report by:

(A) Any duly certified peace officer, sheriff or member of the Tennessee highway patrol;

(B) Any physician, physical therapist, occupational therapist, chiropractic physician, registered nurse, psychologist or social worker duly licensed by the state of Tennessee; or

(C) Any member of the licensee's family within three (3) degrees of consanguinity, or the licensee's spouse, who has reached the age of eighteen (18), except that no person may report the same family member pursuant to this section more than one (1) time during a twelve (12) month period.

(2) The report must state that the person reasonably and in good faith believes that the licensee cannot safely operate a motor vehicle and must be

based upon personal observation or physical evidence which shall be described in the report, or the report shall be based upon an investigation by a law enforcement officer. The report shall be a written declaration in the form prescribed by the department of safety and shall contain the name, address, telephone number, and signature of the person making the report.

(d) Any physician, physical therapist, occupational therapist, chiropractor, registered nurse, psychologist or social worker duly licensed by the state of Tennessee, may report to the department any patient diagnosed or assessed as having a disorder or condition that may prevent such person from safely operating a motor vehicle. Such report shall state the diagnosis or assessment and whether the condition is permanent or temporary. The existence of a physician-patient relationship shall not prevent the making of a report by such medical professionals.

(e) Any person who makes a report in good faith pursuant to the provisions of this section shall be immune from any civil liability or professional licensure sanction that otherwise might result from making the report. All reports made and all medical records reviewed and maintained by the department of safety under this section shall be treated as confidential except in compliance with a subpoena, an order of a court of record or in a review of the commissioner's action pursuant to subsection (i).

(f) The department shall keep records and statistics of reports made and actions taken against driver licenses under this section.

(g)(1) The department shall, in consultation with the driver license medical advisory board established pursuant to subsection (k), develop a standardized form and provide guidelines for the reporting of cases and for the examination of drivers under this section. The commissioner shall provide health care professionals and law enforcement officers with information about the procedures authorized in this section.

(2) The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

(3) The guidelines and regulations implementing this section shall be in compliance with the federal Americans with Disabilities Act of 1990.

(h)(1) Any person who knowingly violates a confidentiality provision of this section, or who knowingly permits or encourages the unauthorized use of a report or reporting person's name in violation of this section, shall be guilty of a Class A misdemeanor and shall be liable for any actual damages.

(2) Any person who intentionally files a false report under this section shall be guilty of a Class A misdemeanor and shall be liable for any actual damages.

(i)(1) All appeals of license revocations, suspensions, denials and restrictions shall be made in accordance with the provisions of this subsection.

(2) Any person who has received a notice of revocation, suspension, denial or restriction may make a written request for a department hearing to review the department's determination. The request shall be made on a form available from the department within thirty (30) days after the receipt of the notice of revocation, suspension, denial or restriction. If the person's driver license has not been previously surrendered, if applicable, it must be surrendered at the time the request for a hearing is made. A request for a hearing does not stay the license revocation, suspension, denial or restriction.

(3) The hearing shall be scheduled to be held within twenty (20) days of the filing of the request for a hearing. The hearing shall be held at a place designated by the department, unless the parties agree to a different location.

The department shall provide a written notice of the time and place of the hearing to the party requesting the hearing at least ten (10) days prior to the scheduled hearing, unless the parties agree to waive this requirement.

(4) The presiding hearing officer shall be the commissioner or an authorized representative designated by the commissioner. The presiding hearing officer shall have the authority to:

- (A) Administer oaths and affirmations;
- (B) Examine witnesses and take testimony;
- (C) Receive relevant evidence;
- (D) Issue subpoenas, take depositions, or cause depositions to interrogatories to be taken;
- (E) Regulate the course and conduct of the hearing; and
- (F) Make a final ruling on the issue.

(5) The sole issue at the hearing shall be whether by a preponderance of the evidence the person is incompetent or unqualified to retain, or obtain, a driver license, or, in the case of restriction, whether by a preponderance of the evidence the person is incompetent to retain an unrestricted driver license. If the presiding hearing officer finds in the affirmative on this issue, the revocation, suspension, denial or restriction shall be sustained. If the presiding hearing officer finds the negative of this issue, the revocation, suspension, denial or restriction shall be rescinded.

(6) The hearing shall be recorded. The decision of the presiding hearing officer shall be rendered in writing, and a copy will be provided to the person who requested the hearing.

(7) If the person who requested the hearing fails to appear without just cause, the right to a hearing shall be waived, and the department's earlier determination shall be final.

(8) Witnesses under subpoena shall be entitled to the same fees as are now or may hereafter be provided for witnesses in civil actions in the circuit court and, unless otherwise provided by law or by action of the agency, the party requesting the subpoenas shall bear the cost of paying fees to the witnesses subpoenaed.

(9) Within thirty (30) days of the issuance of the final determination of the department following a hearing, a person aggrieved by the determination shall have the right to file a petition in the chancery court of the county of the person's residence for judicial review. The filing of a petition for judicial review shall not stay the revocation, suspension, denial or restriction.

(10) The review shall be on the record, without taking additional testimony. If the court finds that the department exceeded its constitutional or statutory authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is unsupported by the evidence in the record, the court may reverse the department's determination.

(11) The Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, applies to the extent it is consistent with proceedings under this subsection.

(j) Any individual whose condition is temporary in nature as reported pursuant to the provisions of subsection (c) shall have the right to petition the commissioner of the department of safety for total or partial reinstatement of the revoked, suspended, denied or restricted license. Such request shall be made on a form prescribed by the

department and accompanied by a statement from a health care provider with the same or similar license as the health care provider who made the initial report resulting in the limitation or loss of the driver license. Such petition shall be decided by the commissioner within thirty (30) days of receipt of the petition. Such decision is appealable pursuant to the provisions of subsection (i).

(k)(1) In order to advise the commissioner on medical criteria for the reporting and examination of drivers with medical impairments, a driver license medical advisory board is hereby established within the department of safety. The board shall be composed of three (3) members appointed by the commissioner. The members of the board shall be licensed physicians and residents of the state of Tennessee. Of the original appointees, one (1) shall serve for a term of two (2) years and two (2) shall serve for terms of four (4) years. Subsequent appointees shall each serve for a term of four (4) years or until their successors are appointed and approved. Any vacancy shall be filled in the same manner as the original appointment for the remainder of the term. The members of the board shall receive no compensation for their services and shall not hire any staff but shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties. After the first full year of operation of the advisory board, the board shall meet no more than four (4) times per year.

(2) No civil or criminal action shall lie against any member of the driver license medical advisory board of the department of safety who acts in good faith in advising the department under the provisions of this act. Good faith shall be presumed on the part of members of the board in the absence of a showing of fraud or malice.

SECTION 2. Tennessee Code Annotated, Section 4-29-223(a), is amended by adding the following language as a new, appropriately designated item:

( ) Driver license medical advisory board, created by Section 1 of this act.

SECTION 3. Tennessee Code Annotated, Section 10-7-504(a), is amended by designating the existing language of subdivision (12) as item (A) and by adding the following language as item (B):

(B) All reports made and all medical records reviewed and maintained by the department of safety pursuant to Section 1 of this act shall be treated as confidential except in compliance with a subpoena, upon order of a court of record or in a review of the commissioner's action pursuant to Section 1(i) of this act.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect July 1, 2000, the public welfare requiring it.